

Decision **DRAFT DECISION OF ALJ BEMESDERFER** (Mailed 4/22/2003)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of SBC Pacific Bell Telephone Company (U 1001 C), a corporation, for Authority to Categorize Local DA Service as a Category III Service.

Application 02-07-050
(Filed July 31, 2002)

OPINION DISMISSING APPLICATION WITHOUT PREJUDICE

We dismiss without prejudice the application of SBC Pacific Ball Telephone Company (SBC or Applicant) for authority to categorize local directory assistance (Local DA) service as a Category III service (Application).

Background

In Decision (D.) 89-10-031, we established three categories of local exchange carrier telecommunications services, ranging from monopoly services in Category I to fully competitive services in Category III. Category II, the current classification of Local DA, encompasses partially competitive services in which the incumbent local exchange carrier retains significant but declining market power.

SBC filed the Application on July 31, 2002, less than three years after we issued D.99-11-051, in which we granted Applicant an increase in Local DA charges to \$0.46 per call and a reduction in the monthly free call allowance for residential customers from five (5) to three (3). According to Applicant, in the intervening time period, the market for Local DA in California has gone from

partially to fully competitive, making it appropriate to place Local DA in Category III.

On September 5, 2002, the Application was jointly protested by the Office of Ratepayer Advocates (ORA) and The Utility Reform Network (TURN). The protestors urged us to dismiss the Application or, in the alternative, to place it on a long calendar pending completion of other proceedings that consider closely related issues and involve many of the same participants.

The assigned Administrative Law Judge (ALJ) Karl Bemederfer conducted a pre-hearing conference (PHC) on November 19, 2002. Prior to the PHC, ALJ Bemederfer directed SBC, ORA and TURN to come to the PHC prepared to discuss whether the Commission should dismiss or defer the Application as urged by the protestors.

At the PHC, ORA pointed out that the Commission is currently conducting a review of the New Regulatory Framework (NRF), Order Instituting Rulemaking (R.) 01-09-001, Order Instituting Investigation (I.) 01-09-002. Part of this review is an examination of the criteria that we should consider when evaluating applications to move services into Category III. For this reason, ORA and TURN believe that the Application is premature. SBC responded by arguing that NRF triennial reviews are more or less constantly ongoing and that the present review will not address a specific service such as Local DA.

ORA also pointed out that D.99-11-051 had established SBC's incremental volume sensitive directory assistance cost at \$0.33, a statement that SBC did not contest. Accordingly, ORA argued that SBC would suffer no financial loss if the Application were dismissed without prejudice or deferred to a later date. SBC responded that the purpose of the Application was not to raise prices but to permit SBC to offer competitive services without having to go through the

lengthy process of gaining our approval. SBC views its inability to respond quickly to competitors as a harm it presently suffers. In response to comments by ORA and TURN, SBC denied that the Application would automatically lead to a price increase for Local DA but admitted that in those states where it has freedom to do so, it most commonly charges \$1.25 for a Local DA call, with no free calls.

In support of its claim that Local DA is a fully competitive service, SBC relied on the pre-filed testimony of its economic expert Dr. Jerry A. Hausman. Dr. Hausman's testimony emphasized the rapid growth of alternative sources of DA information such as free Internet-based directories; CD-ROMs; and competitive long-distance and wireless carriers. ORA questioned whether self-help, using a computer, phone book, CD-ROM or other means, was correctly considered part of the market for directory assistance. SBC conceded that market definition was a legitimate question but argued that it could only be answered if the Application were allowed to proceed.

Commissioner Wood, who was present at the PHC, found the Application deficient in failing to address the impact of moving Local DA into Category III on low-income and foreign-language-speaking consumers, service quality and SBC's California workforce. In particular, he questioned whether low-income consumers would use directory assistance if the price per call were to increase to \$1.25 or \$1.50 and asked that the proceeding determine how many customers presently reach or exceed their call limit and whether customers are made aware that they may ask for multiple numbers on a single call.

Discussion

We believe the primary question before us is whether we should address this application now or whether it should be dismissed without prejudice to

refilling at a later date. For the reasons set out below, we conclude that the application should be dismissed without prejudice.

A. Relationship with other proceedings

At present, there are several significant ongoing proceedings that require the time and attention of an already over-strained Commission staff, including the comprehensive review of the new regulatory framework (NRF) for SBC and Verizon (R.01-09-001 et al.), two separate proceedings to revise unbundled network element (UNE) rates for SBC (A.01-02-024 et al.) and Verizon (R.93-04-003 et al.), the telecommunications industry-wide consumer Bill of Rights proceeding (R.00-02-004), a recently opened industry-wide proceeding to revise service quality rules (R.02-12-004), and a recently opened rulemaking to develop a plan to increase availability and use of advanced telecommunications infrastructure (R.03-04-003). In addition, as a result of requirements flowing from the decision announced by the FCC on February 20, 2003 regarding the unbundling obligations of incumbent local carriers, the CPUC expects shortly to open a resource-intensive docket for the purposes of determining which UNEs should be made available to competitors of the incumbent carriers. All of these proceedings are and will be dependent of the limited resources of the Commission. Moreover, these limited resources have forced the Commission to defer the review of the California High Cost Fund B that was anticipated by D.96-10-066, a docket we plan to open when resources permit.

The most appropriate use of the Commission's and parties' limited resources would be to focus on the aforementioned proceedings and to defer this request to a later time. We also note that the FCC has a pending docket in which it is assessing competition for local directory assistance and considering new measures, such as pre-subscription, that might enhance competition for local

directory assistance.¹ While in an application such as this, the Commission would not be bound by an FCC determination, we also see the benefit of awaiting an FCC decision that may have an impact on competition for local DA.

B. Lack of Injury to SBC From Price Ceiling

As established during discussion at the PHC, the current pricing of Local DA is profitable to SBC and this is not an application to raise prices. Accordingly, a dismissal without prejudice will not cause SBC financial injury resulting from its Category II price ceiling for Local DA.

C. Guidance for a Future Application

Should SBC choose to file a similar application in the future, the application would benefit from a discussion of the effects, if any, of its request on the following: low income and non-English speaking consumers; service quality; and SBC's workforce in California.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on May 12, 2003 and Reply Comments were filed on May 19, 2003.

Response to Comments

SBC and the Communication Workers of America Local 9 ("CWA") commented that the Commission was required by California law to rule on the Application, rather than dismiss it without prejudice. We do not agree. As

¹ See Notice of Proposed Rulemaking in *Provision of Directory Listing Information Under the Communications Act of 1934, As Amended*, CC Docket No. 99-273 et al., FCC 01-384, released January 9, 2002.

pointed out by ORA in its reply comments, there is no Constitutional or statutory requirement that the Commission consider every application filed by a utility. Pub. Util. Code § 701 gives the Commission broad discretion to manage its affairs, including the scheduling of matters to achieve maximum efficiency.

In addition, the Commission is under legislative direction, expressed in SB 960, to process applications within 18 months of their filing. (Ch. 856, § 1, Stat. 1996.) More generally, the Commission is being urged by the legislature to reduce its case backlog and to handle cases more expeditiously. This legislative direction is given to the Commission at the same time as state budget constraints are limiting Commission resources. Under these circumstances, we believe that it would be an unwise use of the Commission's limited resources to process this application at the present time. In that regard, we note the statement by SBC that it had spent more than 2,000 hours of employee time and more than \$80,000 in outside counsel and expert fees. This substantial commitment of time and money indicates the burden that going forward with the application at this time would place on the Commission.

Contrary to the position taken by SBC and the CWA, the NRF review has a direct bearing on this matter. As part of that review, the Commission is considering (a) whether to modify the criteria for moving a service into Category III and (b) whether to modify the pricing rules under Category III. At the conclusion of the NRF review, all parties will have a clearer understanding of the ground rules governing Category III services. Accordingly, an application for re-categorization will be appropriate after the NRF review is completed. At that time, by virtue of concluding a major case, the Commission should have a less active telecommunications docket and, in any event, the Commission will

have had an opportunity to plan its resource needs for a resource-intensive proceeding such as this.

Assignment of Proceeding

Loretta M. Lynch is the Assigned Commissioner and Karl J. Bemederfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The most appropriate use of the Commission's and parties' limited resources would be to focus on the Commission's numerous resource-intensive existing proceedings, as well as anticipated priority proceedings in the future, and to defer devoting resources to this request to a later time.
2. The FCC has a pending docket in which it is assessing competition for local directory assistance and considering new measures, such as pre-subscription, that might enhance competition for local directory assistance.
3. Dismissal without prejudice of this application will not cause SBC financial harm resulting from SBC's current Category II price ceiling for local directory assistance.

Conclusion of Law

The Application should be dismissed without prejudice.

O R D E R**IT IS ORDERED** that:

1. The Application of SBC Pacific Bell Telephone Company for authority to categorize Local Directory Assistance Service as a Category III service is dismissed without prejudice.

2. Should SBC choose to file a similar application in the future, the application should discuss the effects, if any, of its request on low income and non-English speaking consumers, service quality for local directory assistance, and SBC's workforce in California.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.